IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 15812 of 2007(G)

PETITIONER:

V.C.MAHESWARA KAIMAL,
VISWANATHA MANDIRAM, ERAMALLUR P.O.,
SHERTHALLAI.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:

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1. ERAMALLUR SERVICE CO-OPERATIVE BANK LTD.NO.1175, ERAMALLUR P.O.-688 537, REPRESENTED BY ITS SECRETARY.

2. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), SHERTHALAI.

3. THE RETURNING OFFICER/UNIT INSPECTOR, OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), SHERTHALAI.

R1 BY ADV. SRI.P.N.MOHANAN

R2 & R3 BY GOVERNMENT PLEADER (SHRI P.N. SANTHOSH)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C) NO.15812 OF 2007 G

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ELECTION NOTIFICATION NO.E/507/2007/SCEC DATED 7.5.2007.

EXT.P2 TRUE COPY OF THE REPLY DATED 7.4.2007.

EXT.P3 TRUE COPY OF THE LETTER DATED 28.4.2007.

EXT.P4 TRUE COPY OF THE SUMMON AND PLAINT IN ARC 227/07 DATED 10.5.2007.

EXT.P5 TRUE COPY OF THE WRITTEN STATEMENT DATED 18.5.2007.

EXT.P6 TRUE COPY OF THE RECEIPT DATED 12.1.2002.

EXT.P7 TRUE COPY OF THE VAKALATH FILED IN ARC 227/07 DATED 23.5.2007.

EXT.P8 TRUE COPY OF THE AFFIDAVIT, PETITION AND LIST OF WITNESSES IN ARC 227/07 DATED 23.5.2007.

EXT.P9 TRUE COPY OF THE AFFIDAVIT, PETITION AND LIST OF DOCUMENTS DATED 23.5.2007.

EXT.P10 TRUE COPY OF THE RECEIPT NO.827/2007 DATED 23.5.07 AND APPLICATION DATED 23.5.2007.

RESPONDENTS' EXHIBITS:

EXT.R1(A) TRUE COPY OF THE DECISION DATED 5.5.2007.

EXT.R1(B) TRUE COPY OF THE OBJECTION FILED BY PETITIONER ON 18.5.07.

EXT.R1(C) TRUE COPY OF THE STATEMENT.

EXT.R1(D) TRUE COPY OF THE PROCEEDINGS DATED 23.5.07 OF THE ARBITRATOR.

EXT.R1(E) TRUE COPY OF THE AWARD DATED 23.5.2007.

EXT.R1(D) TRUE COPY OF THE MINUTES DATED 18.9.2004 AND RESOLUTION NO.107.

(EXT.R1 (D) IS PRODUCED AS PER IA NO.7048/07).

// TRUE COPY//

PS TO JUDGE.

K. M. JOSEPH, J.

W.P.C. NO. 15812 OF 2007 G

Dated this the 7th June, 2007

JUDGMENT

Case of the petitioner, in brief, is as follows:

Petitioner is a Member of the Managing Committee of the respondent Bank and was also the President of the Bank during the period of the previous Committee. The present Committee is superseded which Order is challenged before this Court. The election has been scheduled to be held on 9.6.2007 vide Ext.P1 Election Notification. Petitioner and his wife while travelling in a Scooter met with a serious accident on 19.4.2007 and the petitioner's wife died on 20.4.2007. Petitioner also sustained injuries and was hospitalised for some time. Petitioner has received Ext.P2 Notice from the Bank stating that an amount of Rs.4,09,097/= is due from the petitioner to the Bank as interest for the amount that was drawn by the petitioner from the Bank. By Ext.P3, petitioner replied informing the Bank about the accident and the demise of his wife and requested for one

month's time for perusing the records. But, instead of granting time, at the instance of the newly appointed Administrator, Plaint in ARC was filed before the second respondent. Sumons was also issued to the petitioner on 10.5.2007. On the first posting day, i.e. on 18.5.2007, petitioner appeared and submitted his Written Statement wherein it was made clear that the entire amount drawn as advance has been repaid by him on 12.1.2007 and the same was received by the first respondent Bank and the Account was closed. It is also stated by him that the Committee by Resolution dated 8.9.2004 had taken a decision not to claim any interest towards the amount to be remitted by petitioner. Exts.P5 and P6 are the Written Statement and Receipt. Petitioner also sought for an opportunity to adduce evidence and to substantiate his case. The case thereafter was posted to 23.5.2007. Petitioner appeared through counsel on the said day, but the second respondent refused to accept the Vakalath. Ext.P7 is the copy of the Vakalath. Second respondent noted in her proceedings that in the nature of the case, the assistance of a

counsel is not required. Petitioner thereupon filed Exts.P8 and P9 applications seeking permission to examine certain witnesses on his behalf and also to summon certain documents which were in the possession of the first respondent. Second respondent rejected both the applications and stated that she is passing an Award on the same day itself. Petitioner filed Ext.P10 application seeking to make available certified copies of certain documents available with the second respondent, for the purpose of taking the matter to the higher Forum. Petitioner waited till evening. But, neither the copies of the documents sought for, nor the copy of the Award were issued to him. Pursuant to Ext.P1 Notification, the date for filing of nominations is fixed as 24.5.2007 and the date for scrutiny of the nominations is fixed as 25.5.2007. By passing the Award against the petitioner holding that amounts are due from him, the respondent wants to see that the petitioner is disqualified, it is stated. Petitioner seeks a writ of mandamus directing the second respondent to reopen the proceedings in ARC 227/07 and to afford sufficient

opportunity to the petitioner for adducing evidence. A declaration is also sought to the effect that any Award passed without affording reasonable opportunity to the petitioner is illegal and non-est in the eye of law. A direction also is sought to accept his nomination and not to reject the same on the basis of the Award in ARC No.227/07. Petitioner relies of Section 70 of the Co-operative Societies Act and Rule 67 of the Co-operative Service Rules. He would contend that it is flouting the provisions and without giving an opportunity to the petitioner to establish his case, as is evident from the facts as stated that the Award is passed with undue haste. He would submit that there is no dispute between him and the respondent Bank, since the entire amount has been repaid and the Account closed and since the Managing Committee has taken decision not to claim interest for the amount due from petitioner. Counsel would also submit that the question relating to interest is governed by the Interest Act. There is no contract to pay any interest and conditions do not exist warranting the passing of an Award awarding interest

in favour of the first respondent. Counsel for petitioner submitted that the Officers of the Department have inspected the Minutes Book including the Resolution in question and they have approved it.

2. A Counter Affidavit is filed on behalf of the first respondent Bank, inter alia, stating as follows:

Petitioner was the President of the Bank during the period 1999 - 2004. During the petitioner's previous period, while he was the President, he took advances of huge amounts on various dates in the years 2000, 2001 and 2002. Advance can be availed by either of the President or the Committee Members of the Bank for a particular purpose of purchase etc. or for the various purposes of the Bank. After serving the purpose for which the amount was taken, following the next day, the same has to be closed.. Petitioner did not settle the advances on the next day. Vouchers or Receipts had to be produced. In the routine inspection, it was found that the advances amounting to Rs.3,77,000/= was taken by the petitioner. The advance was

repaid only on 12.1.2007, after seven years. The Unit Inspector had recommended to recover the amount with interest from the petitioner. Ext.R1(a) is the decision dated 5.5.2007 to file Arbitration Case. Ext.R1(b) is the objection of petitioner. Ext.R1(c) is a Statement of Account showing the amount due from petitioner. It is stated that during the Arbitration Proceedings, it was found that as the entire advance amount was paid, only the question of interest was to be decided. Ext.R1(d) is the true copy of the Proceedings of the Arbitrator. Ext.R1(e) is the Award. It is stated that for the deposits during the year 2000, the Bank was liable to pay interest at the rate of 11.5 per cent. It is stated that advance amounts were taken from the Deposits received from the public and the Bank is entitled to get interest for the amount retained by the petitioner for the last seven years. It is stated that the Award of the Arbitrator is appealable under Section 82 of the Act. It is stated that by reopening the evidence in this case, no purpose will be served, as the petitioner has already admitted that the amounts were

availed and that he refunded the same only on 12.1.2007. Ext.R1(d) is produced which is the Minutes of the Meeting dated 18.9.2004. It is stated in the petition that the petitioner was the President of the Meeting and it was decided to collect interest from the petitioner for the amount due to the Bank. It is the case of the respondent that this Court has held in Writ Appeal No.1732/04 (reported in Subramanian v. Devicolam Taluk Plantation Workers Co-op. Credit Society (2004 (2) KLJ 979), as follows:

> *"According to the learned counsel, such a dispute will not come under the purview of Section 69 of the Kerala Co-operative Societies Act in view of the Explanation under Section 69 (2)(c). We do not find any merit in this contention. As per Section 69(2)(c) for the purpose of sub-section (1) of Section 69, any dispute arising in connection with the election of the Board of Management or any Officer of the Society shall be deemed to be a dispute. As per the Explanation under Section 69(2)(c), a dispute arising at any stage of the election*

> *commencing from the convening of the General Body Meeting for the election shall be deemed to be a dispute arising in connection with the election. In the present case, the dispute arose at the stage of the scrutiny of the nomination papers."*

It is submitted, therefore, that this Court may not interfere. It is further submitted by the respondent that the conduct of the petitioner may be noted as in Article 226 of the Constitution of India, the jurisdiction is discretionary and extraordinary and the petitioner is not entitled by virtue of his conduct, to any relief from this Court. It is pointed out that the petitioner had participated in the Meeting in 2004 and even though the amount was with him from 2000 onwards and the resolution was taken in the year 2004, the petitioner remits the amount only on 12.1.2007. Therefore, it is pointed out that there is no justice in the claim of the petitioner so as to warrant interference. Counsel for first respondent relied on the Byelaw also to contend that the Award is sustainable. The first respondent also relied on Section 94(8) of the Co-operative Societies Act which

reads as follows:

> *"S.94(8): If any Officer or member of a society misappropriates* ***or unauthorisedly*** *or illegally keeps anmy money belonging to that society he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to then thousand rupees, or with both"*

3. It is important to refer to the Resolution as actually passed by the Committee on 18.9.2004. When translated, it appears to be to the following effect:

> *The Committee decides not to make any reduction from the advance amount taken by the previous President Shri V.C. Maheswara Kaimal, since he did not produce Vouchers and Bills for the amount spent. The Committee further resolves to initiate legal proceedings to recover the entire amount, if the amount of Rs.3,58,664/90 due to the Bank is not paid without interest.*

4. It is to be noted that in the decision of the Division Bench in Subramanian v. Devicolam Taluk Plantation Workers Co-op. Credit Society (2004 (3) KLT S. N. 145 at Page 105), the appellants challenged the acceptance of the candidature of respondents 4 and 11. The learned Single Judge also had observed in his Judgment that in view of the dispute on factual issues, election petition is the more appropriate remedy. I do not think it could be said that in no case, however, palpably unsustainable, the rejection of the nomination appears to the Court in Article 226, it should feel itself helpless to grant relief. Of course, in this case, the primary question is the legality of the Award, as the factum of the passing of the Award is not in dispute. But, can the mere fact that an Award is passed irrespective of how it is passed, be ignored by the Court ?

5. The first posting of the Arbitration Case was on 18.5.2007. On the very same day, petitioner has filed a Written Statement wherein he has raised the contention disputing his

liability. The matter stood posted to 23.5.2007. Apparently, the petitioner sought to be represented through counsel. That came to be disallowed. Petitioner filed applications as Exts.P8 and P9 seeking to examine certain witnesses and summons certain documents. That apparently came to be rejected by the second respondent and the Award came to be passed on 23.5.2007 itself. I would think that the manner in which Ext.R1(e) Award came to be passed makes it vulnerable for breach of principles of natural justice. The Award of the Arbitrator has far reaching consequences. It binds the party just as a Decree of a Civil Court. What is more, in the context of the facts of this case, it is clear that the Arbitrator in passing the Award on the date on which she did, has facilitated the rejection of the nomination paper of the petitioner in the light of Rule 44 of the Co-operative Societies Rules as per which the petitioner became a defaulter. I do not find there is any discussion of the effect of the Resolution which has been referred to by me. There is also no reference to Ext.P6 receipt. Ext.P6 receipt purports to be not

only receipt of cash, but it is stated therein that the Account is closed, petitioner contends. In Ext.R1(d) which is produced as the copy of the Proceedings of the Arbitrator on 23.5.2007, the reason for rejection of the application to examine witnesses is stated that the fact that the petitioner has repaid the amount taken as advance. In the Award also what is stated is that as the petitioner has taken the advance irregularly, he is bound to pay interest at 18 per cent as per the Byelaw and the provisions of the Co-operative Societies Act and the Rules. In such circumstances, I feel that in the special facts in this case, when the first posting was on 18.5.2007 on which day Written Statement is filed contesting the claim and the Award is passed on the very next posting denying the right to examine the witnesses and call for the documents, the Award amounts to denial of an opportunity to the party to substantiate his case. In such circumstances, the Award passed in ARC No.227/07 is to be declared as illegal. I do so. The second respondent will take up ARC No.227/07 and proceed to consider the matter afresh in

accordance with law, after affording sufficient opportunity to the petitioner to substantiate his contentions. The interim direction to provisionally accept the nomination of the petitioner is made absolute.

The Writ Petition is allowed as above.

K. M. JOSEPH, JUDGE

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